

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NOYE MILLER,)
)
 Plaintiff,)
) Civ. No. 01-551-SLR
 v.)
)
 UNITED STATES OF AMERICA and)
 DELAWARE TRANSIT CORPORATION,)
)
 Defendants.)

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Transit Corporation.

OPINION

Dated: September 28, 2004
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

On August 13, 2001, plaintiff Noye Miller filed this action against defendants United States and Delaware Transit Corporation ("DART"). (D.I. 1) Specifically, plaintiff asserts a claim under the Federal Tort Claims Act, 28 U.S.C. §§ 2671 et seq., alleging that defendants are liable for injuries he sustained while riding defendant DART's bus. On January 14, 2004, in a telephone conference the parties agreed to bifurcate the trial. A bench trial on the liability issues was held on April 29, 2004.

This court has jurisdiction pursuant to 28 U.S.C. §§ 1346(b)(1),¹ 1367(a), although defendant United States contests this jurisdiction.

II. FINDINGS OF FACT

1. This case requires a determination of liability for injuries caused when the defendant DART's bus made a sudden stop.

¹ [T]he district courts . . . shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.
28 U.S.C. § 1346(b)(1).

2. Plaintiff, Noye Miller, is 55 years old. Prior to the incident, plaintiff used a cane when walking due to problems with his back and legs. Plaintiff suffered from dizzy spells around the time in question. Plaintiff was taking Percocet, Xanax, Zyprexa and Serazone. (D.I. 48 at 13, 22-24, 37)

3. On April 21, 2000, around 5:00 p.m., plaintiff was a passenger on defendant DART's bus. He got on the bus at Fifth and Orange Streets in Wilmington, Delaware, carrying a suit in his arms. His wife, Velma Miller, was a passenger on the same bus. She was seated near the middle, on the driver's side of the bus. (Id. at 33, 45) When plaintiff got on the bus the driver told him to put his suit down and then come back up front to pay his fare. As plaintiff was walking back to his wife to lay down his suit, the bus started to pull away from the bus stop. Plaintiff was not holding onto any hand rails. The bus began moving slowly down Orange Street and was picking up speed as it proceeded. The bus made a sudden stop, at the intersection of Orange and Sixth Streets, that caused plaintiff to lose his footing.² (Id. at 13, 26, 47)

²The bus driver, Antone Wiggins, testified that the plaintiff was seated next to his wife after the sudden stop but, after the next scheduled stop at Rodney Square, was under the seat in front of his wife. (Wiggins Depo. at 49, 52) Another uninterested witness, William Edwards, testified at trial that plaintiff fell when the bus slammed on its brakes.

4. A bus along this route would normally start moving slowly away from the bus stop along Orange Street and pick up speed as it drove. (Id. at 17, 33-31)

5. The bus had handrails on top of the seats. (Id. at 48)

6. At the time the bus stopped suddenly, a half-ton United States' postal truck ran a stop sign at the intersection of Orange and Sixth Streets.³ (Id. at 26-28, 32-33, Wiggins Depo. at 22) This intersection is the first intersection after plaintiff got on the bus. (Id. at 38)

7. The Rodney Square post office has both two-ton and half-ton mail trucks. Unless a specific truck is assigned to a route, the type of truck used on a route depends on the driver's selection. (Id. at 67) Normally two-ton trucks are assigned to the collection routes running out of the Rodney Square office.⁴ (Id. at 114) The postal service does not document who takes what kind of vehicle. (Id. at 68)

8. Postal trucks are white and carry the U.S. Postal Service insignia on them. The insignia includes an eagle, red and blue stripes and identification of the U.S. Postal Service. (Id. at 101, 131)

³The intersection is regulated by a stop sign on Sixth Street. (Wiggins Depo. at 22)

⁴Although two-ton trucks are generally used for collection routes, which truck a driver uses is a matter of preference. (Id. at 67, 114)

9. Postal Service policy only allows trucks to be used to deliver and pick-up mail; they cannot be used for personal reasons. (Id. at 56, 130)

10. The Rodney Square post office has three collection routes. (Id. at 55)

11. The Postal Service documents collection activity through "scanner history detail reports." These reports tell the postal service the collector's name, the route number assigned, the date, the mailboxes included on a route, the type of mailboxes, the scheduled pick-up time, and the actual pick-up time. (Id. at 74) In some cases, employees will not pick up mail and the pick-up location will be documented as "missed." The Postal Service only accepts "missed" pick-ups if a collector is unable to get to the mailbox (e.g., the building where the box is located is closed). In these cases, an employee will have had to stop at the pick-up location during the route to verify that he was unable to get to the mailbox. (Id. at 81-82) If a mail carrier returns from a pick-up route with "missed" boxes, he is directed to return to the location that was missed and a manager will have to sign off on any boxes that were uncollected. (Id. at 134)

12. The post office does not assign driving routes, so employees can select what streets they take to get to mail boxes

along their collection route.⁵ (Id. at 99-100) The "scanner history detail reports" will not tell the post office where an employee is between collection stops. (Id. at 57, 97)

13. The Postal Service's policy does not allow collectors to pick up mail earlier than the scheduled time and does not penalize collectors for late pick-ups. (Id. at 106, 127)

14. On April 21, 2000 at 5:00 p.m., there were five employees from the Rodney Square post office still working. Three of them, Mike Lutz, Sean Foster and August Ambrosius, were running collection routes. Two employees, Cynthia Hopkins and Robert Green, were delivering mail. Ms. Hopkins was on a walking route and would not have been driving a postal vehicle. Mr. Green was in the Southbridge area, close to New Castle, Delaware. (Id. at 72-73, 118) Mr. Foster did not begin his route until 6:24 p.m. and would not have been driving through the intersection in question around 5:00 p.m. (Id. at 75)

15. There were two employees in the vicinity of the intersection of Sixth and Orange Streets in the early evening of April 21, 2000. (Id. at 76) Mr. Ambrosius began his route just after 4:30 p.m. At 5:00 p.m., he picked up mail at 1007 Market Street. At 5:14 p.m., he picked up mail at 100 South French Street. (Id. at 77, Ex. 3) Mr. Ambrosius could have traveled

⁵Testimony indicated there were streets postal employees normally took for each collection route, but these were not mandatory. (D.I. 48 at 57, 82, 97, 100)

from 1007 Market Street, south on Tatnall, turned left on Sixth Street and taken it to King street, which would take him down to 100 South French Street. During this route, Mr. Ambrosius would have passed through the intersection in question. (Id. at 128)

Mr. Lutz picked up mail at 4:31 p.m. at 301 West Eleventh Street. Thirty minutes later he picked up mail at 300 Delaware Avenue. At some point, Mr. Lutz "missed" the mail pick-up at 625 Orange Street, which is on Orange between Sixth and Seventh Streets. According to postal service policies, Mr. Lutz would have had to stop by this location between 4:15 p.m., which is the scheduled pick-up time, and 5:31 p.m., when he returned to the post office. (Id. at 102-105, 133)

III. CONCLUSIONS OF LAW

A. Jurisdiction Under 28 U.S.C. § 1346

1. Jurisdiction over this case exists by virtue of the Federal Tort Claims Act, as it is alleged that the negligent conduct at issue stems from federal employees acting within the scope of their employment. 28 U.S.C. § 1346(b); see United States v. DeCamp, 478 F.2d 1188 (9th Cir. 1973). The Act serves as a limited waiver of defendant United States' sovereign immunity.

2. Plaintiff provided evidence that postal service trucks were in the vicinity of the accident⁶ and that the trucks were operated by federal employees most likely within the scope of their employment.⁷ The defendant United States shed some doubt upon the type of postal vehicle in use at the time of the accident. This evidence, however, does not discredit plaintiff's evidence. First, the plaintiff's witness accurately described the postal insignia which, according to postal employees' testimony, is on every postal vehicle. Second, no postal employee testified that it was impossible for a half-ton postal truck to have been at the intersection. Two witnesses, the most convincing being the bus driver, testified that a postal truck ran the stop sign. The other witness identified a truck consistent with one owned and used by the Rodney Square office. In addition, the bus driver testified that the postal truck driver was wearing a uniform. (Wiggins Depo. at 21) Third, all of the postal employees testified that it would be highly unlikely for a postal truck to be used outside the scope of employment. Consequently, plaintiff carried his burden and established that a postal truck, operated by an employee within

⁶Both Mr. Lutz and Mr. Ambrosius were around Sixth and Orange Streets during the time at issue. (D.I. 48 at 77-105)

⁷There was testimony by postal employees that policy mandates that postal trucks in service are being used by employees to pick-up or deliver mail. (D.I. 48 at 56, 130)

the scope of employment, caused the incident. Therefore, this court has jurisdiction over this case.

B. Liability of Defendant United States

3. Violation of a stop sign statute is negligence per se. See Wise v. Rothwell, 496 F.2d 384, 387-88 (3d. Cir. 1974); Duphily v. Del. Elec. Coop., Inc., 662 A.2d 821, 828 (Del. 1995); Rumble v. Lingo, 147 A.2d 511, 513 (Del. 1969). In addition to negligent conduct, Delaware law requires that a plaintiff provide evidence that the defendant's negligent conduct was the proximate cause of the injury. See Duphily, 662 A.2d at 821. A proximate cause is defined as "that direct cause without which the accident would not have occurred." See Laws v. Webb, 658 A.2d 1000, 1007 (Del. 1995).

4. Defendant United States' employee was negligent when he ran a stop sign.

5. The court concludes that defendant United States' negligent conduct proximately caused plaintiff to fall on the bus. As a result of the postal truck running the stop sign, defendant DART's bus made a sudden stop to avoid a collision, which caused plaintiff to fall.

C. Liability of Defendant DART

6. Generally, under Delaware law it is not per se negligent to put a bus in motion while a passenger is walking to a seat. See Cannon v. Del. Elec. Power Co., 24 A.2d 325 (Del.

Super. Ct. 1941); D.C. Transit Sys., Inc. V. Carney, 254 A.2d 402 (D.C. 1969). However, under circumstances where greater care is warranted, it can be considered negligent. Id. In these situations the question becomes one of foreseeability; if the bus driver should have known that pulling into traffic imposed a risk of harm on his passengers, then he was negligent in doing so. See Ryan v. Del. Auth. for Reg'l Transit, No. 78C-AP-114, 1985 WL 552276 (Del. Super. March 18, 1985).

7. The court concludes that under the circumstances, the bus driver⁸ was negligent when he started driving while plaintiff was walking in the aisle. Plaintiff has had a history of leg and back problems, which caused him to have trouble walking. In addition, he was carrying something in his hands, which was cumbersome enough to cause the bus driver to allow him to board the bus without paying his fare.

8. The driver's negligence proximately caused plaintiff's injuries because, if the bus had remained parked until plaintiff sat down, he would not have fallen on his way to his seat.

D. Contributory Negligence of Plaintiff

9. Plaintiff was contributorily negligent because he failed to exercise due care for his own safety when he failed to hold on to the hand rails once the bus started moving. In light

⁸Defendant DART did not contest that it was vicariously liable for the driver's actions.

of plaintiff's back and leg problems and dizziness, it was foreseeable that he might fall while walking to his seat. Although plaintiff had a suit in his hands, there is no evidence that he could not hold on to the hand rail with one hand and the suit with the other.

IV. CONCLUSION

Having concluded that plaintiff proved, by a preponderance of the evidence, that the negligent acts of defendants United States and DART caused his injuries and that plaintiff's own negligent omission contributed to those injuries, the court further concludes that defendant United States is fifty percent (50%) liable, defendant DART is twenty-five percent (25%) liable, and plaintiff is twenty-five percent liable (25%). An order consistent with this opinion shall issue.